

Senate Bill No. 255

Passed the Senate August 21, 2003

Secretary of the Senate

Passed the Assembly July 17, 2003

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of
_____, 2003, at _____ o'clock __M.

Private Secretary of the Governor

└

CHAPTER _____

An act to add Section 12077.5 to the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 255, Ducheny. Firearms: firearm eligibility checks.

Existing law requires a licensed firearms dealer to submit specified information to the Department of Justice in connection with the purchase of a firearm to enable the department to determine whether the prospective purchaser is prohibited from purchasing or otherwise possessing a firearm.

This bill would provide a procedure to allow individuals to request that determination without the necessity of a firearm purchase. The bill would authorize the department to charge a fee for this service. This bill would also prohibit any person or agency from requiring or requesting another person obtain a firearms eligibility check or notification of a firearms eligibility check. The bill would further provide that a violation of that prohibition would be a misdemeanor.

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 12077.5 is added to the Penal Code, to read:

12077.5. (a) An individual may request that the Department of Justice perform a firearms eligibility check for that individual. The applicant requesting the eligibility check shall provide the information required by subdivision (c) of Section 12077 to the department, in an application specified by the department.



(b) The department shall charge a fee of twenty dollars (\$20) for performing the eligibility check authorized by this section, but not to exceed the actual processing costs of the department. After the department establishes fees sufficient to reimburse the department for processing costs, fees charged may increase at a rate not to exceed the legislatively approved cost-of-living adjustment for the department's budget or as otherwise increased through the Budget Act.

(c) An applicant for the eligibility check pursuant to subdivision (a) shall complete the application, have it notarized by any licensed California Notary Public, and submit it by mail to the department. Upon receipt of a notarized application and fee, the department shall do all of the following:

(1) Examine its records, and the records it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, to determine if the purchaser is a person described in Section 12021 or 12021.1 of this code, or Section 8100 or 8103 of the Welfare and Institutions Code.

(2) Notify the applicant by mail of its determination of whether the applicant is a person described in Section 12021 or 12021.1 of this code, or Section 8100 or 8103 of the Welfare and Institutions Code. The department's notification shall state either "eligible to possess firearms as of the date the check was completed" or "ineligible to possess firearms as of the date the check was completed."

(d) If the department determines that the information submitted to it in the application contains any blank spaces, or inaccurate, illegible, or incomplete information, preventing identification of the applicant, or if the required fee is not submitted, the department shall not be required to perform the firearms eligibility check.

(e) The department shall make applications to conduct a firearms eligibility check as described in this section available to licensed firearms dealers and on the department's Web site.

(f) The department shall be immune from any liability arising out of the performance of the firearms eligibility check, or any reliance upon the firearms eligibility check.

(g) No person or agency may require or request another person to obtain a firearms eligibility check or notification of a firearms



eligibility check pursuant to this section. A violation of this subdivision is a misdemeanor.

(h) The department shall include on the application specified in subdivision (a) and the notification of eligibility specified in subdivision (c) the following statements:

“No person or agency may require or request another person to obtain a firearms eligibility check or notification of firearms eligibility check pursuant to Section 12077.5 of the Penal Code. A violation of these provisions is a misdemeanor.”

“If the applicant for a firearms eligibility check purchases, transfers, or receives a firearm through a licensed dealer as required by law, a waiting period and background check are both required.”

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



Approved _____, 2003

Governor

